

IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT COURT OF KIGOMA)

AT KIGOMA

MISCELLANEOUS LAND APPLICATION NO. 49 OF 2021

1. MOSHI NDI MULIGO1ST APPLICANT

2. SAID ATHUMANI 2ND APPLICANT

VERSUS

WADHAMINI WA BARAZA KUU..... RESPONDENT

RULING

28/3/2022 & 20/4/2022

F. K. MANYANDA, J.

A delay of 147 days equivalent to five (5) months minus three days has brought the Applicants to this Court in this application seeking for extension of time within which to file a revision.

The Applicants are challenging a ruling dated 18/5/2021 which dismissed their application for execution filed in the District Land and Housing Tribunal (DLHT) registered as Land Execution No. 70 of 2018.

When the application was brought before this Court on 15/2/2022, it was reported by Mr. Kabuguzi, learned Advocate, who represented the Respondent that the First Applicant Moshi Ndimuligo passed on. Since Mr. Kiviyiro, learned Advocate who represented the Applicants did not have any notice, he was directed to confirm the same and furnish the court with proof. The next hearing date.

On 21/2/2022 Mr. Kiviyiro requested to amend the chamber application by dropping the first Applicant, hence there remains one Applicant, that is the second Applicant, Said Athuman, as the only applicant. There been no objection from the Respondent, the name of the first Applicant was marked withdrawn as such and consequently the chamber summons amended so that there remains only one Applicant, that is, Said Athuman.

Briefly the background of this matter is that the Applicant and the Said Moshi Ndimuligo on 7/6/2014, filed Land Application in the Buhanda Ward Tribunal for ownership over a disputed Land an application which was unfortunately unnumbered. The said Ward Tribunal decided in their favour. Unsatisfied, the Respondent filed an appeal to the District Land and Housing Tribunal (DLHT) for Kigoma in Land Appeal No. 12 of 2015 which reversed the decision of the Ward Tribunal and granted ownership of the disputed land to the Respondent.

That decision of the DLHT aggrieved the Applicant and the said Moshi Ndimuligo who decided to appeal to this Court by then at Tabora. They were out of time, hence they decided to apply for extension of time. They filed an application in the High Court at Tabora which was registered as Misc. Land Application NO. 74 OF 2016. The same Application was dismissed for want of merits.

From somewhere, the Applicant and Moshi filed on application for execution of the decision of the Ward Tribunal in the DLHT which was registered as Execution No. 70 of 2018, the DLHT dismissed it on 18/5/2021 on grounds that the decision on which it was built was reversed by the DLHT.

The Applicant and the Said Moshi Ndimuligo were not satisfied by the dismissal of their application for execution in the DLHT. They sought to challenge that decision in this Court hence filed the current application, in which, as stated above, Moshi Ndimuligo was withdrawn. The complaint by the Respondent on *locus standi* of the Applicant Said Athuman is overtaken by event.

The Applicant has reasons for delay stated in the affidavit that the delay was occasioned partly due to time wasted on waiting for copy of the ruling and partly due to technical delay.

The contended technical delay is that there was filed an appeal instead of an application for revision. However, since no appeal lies to the High Court from an application for execution by the DLHT, the purported appeal was rejected. That the rejection report reached the Applicant lately.

The Respondent opposes this contention alleging that the delay is inordinate and no cogent reasons have been given to account for the delay of each day.

As I have stated in my ruling at the top, the delay is of 147 or four (4) months and 27 days about five months minus three days.

It is trite law that extension of time is a discretionary power of this Court, it is not automatic, and such discretionary power is exercised judiciously upon the Applicant showing good cause.

In the case of **Alliance Insurance Corporation Ltd vs Arusha Art Ltd**, Civil Application No. 33 of 2015 (unreported) the Court of Appeal stated that: -

"Extension of time is a matter of discretion of the Court and that the Applicant must put material before the Court which will persuade it to exercise its discretion in favour of an extension of time".

It is the material fact which establishes the "good cause". The term "good cause" or "sufficient cause" is yet to be defined, it depends on the circumstances of each case. In the case of **Salim Lakhani and 2 others vs Ishfaque Shabir Yusufali (as administrator of the Estate of Late Shabir Yusufali)**, Civil Application No. 455 of 2019 (unreported) which was decided on 11/5/2020 the Court of Appeal held that: -

"What amounts to good cause is yet to be defined... it depends on the circumstances of each case. The discretion under Rule 10 of the Rules has to be exercised according to the rules of reason and justice..."

In another case of **Registered Trustees of the Archdiocese of Dar es salaam Chairman of Bunju Village and 11 others**, Civil Appeal No. 147 of 2006 (unreported) the Court of Appeal said as follows: -

*"It is difficult to define the meaning of the words "sufficient cause". It is generally accepted however, that the words should receive liberal construction in order to advance substantial justice, **when no negligence or in action or want of bona fide, is imputable to the appellant**".*
(emphasis added).

Factors for consideration were well spelt out in the case of **Lyamuya Construction Company Limited vs Board of Trustees of Young**

Women Christian Association of Tanzania, Civil Application No. 2 of 2020 (unreported) to be: -

- a. The Applicant must account for all days of the delay*
- b. The delay should not be inordinate*
- c. The Applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take*
- d. If the court feels that there are other reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

In the instant application, the Applicant shows that the delay is inordinate, as said above about five (5) months. The affidavit states that a copy of judgment was supplied on 15/7/2021, this application was filed on 12/10/2021.

It means the period of about three months is unaccounted for. In paragraph 6 of the affidavit, it is stated without telling the specific dates that an appeal was wrongly filed instead of the application for revision. Moreover, there is no any document attached in order to support these mere words assertion. There is no any affidavit from the registry to support the Applicant on this contention.



It is trite law that a person relying on evidence obtained from another person has to get an affidavit in support of him from that other person or else his evidence, as far as the evidence obtained on information from that other person, will be rendered hearsay which is no evidence in law.

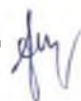
In the case of **Daniel Malambo and 2 Others vs Pangea Minerals Limited**, Misc. Labour Application No. 3 of 2020 this Court, Hon. Mkwizu, Judge, said as follows: -

"Mr. Frank informed this court that he was informed by the registry officer that the applications could not be registered as the court was functus officio. The allegation, is in my view, a bluntly lie. First of all, the name of the registry officer consulted is not disclosed and there is no affidavit of the said Registry Officer to that effect attached in this application to support this point."

I also said in the case of **Tereza Magero vs. Masonyi Jogoro, Miscellaneous Land Application No. 18 of 2019** as follows: -

"The Applicant ought, to present an affidavit from an officer of the registry to establish that in fact she reported at the registry of this court on 21/01/2019 and lately got informed about delivery of the ruling in issue that it was delivered on a public day 26/12/2018 as she alleged."

I said so after referring to the case of **M/S Tanzania Coffee Board vs. M/S Rombo Millers Limited**, Civil Application No. 35 of 2015 (unreported) where



the Applicant relied on information from a registry officer; the Court of Appeal said:

"a person relying on evidence from a Registry Officer of misplacement of documents must obtain from him an affidavit in his support."

See also the case of **Mshamu Saidi (as Administrator of the Estate of Late Said Mbwana) vs. Maige Ntambi and 23 Others**, Miscellaneous Land Application No. 342 of 2019, (unreported) High Court at Mwanza.

In my views and on the strength of the above cited authorities, this application falls short of meeting the tests in **Lyamunya Construction Co. Ltd (Supra)**.

The Applicant has failed to account for delay of each day and in fact the delay is also inordinate.

In the result, for reasons stated above, I find that the application lacks merits. I do hereby dismiss it for want of merits with costs.




F.K. Manyanda

Judge

20/4/2022